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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/855,269	05/15/2001	Daniel Wise	25,067 USA	9154

7590

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SYNNESTVEDT & LECHNER LLP

Aramark Tower

1101 Market Street, Suite 2600

Philadelphia, PA 19107

EXAMINER

VIG, NARESH

ART UNIT

PAPER NUMBER

3629

DATE MAILED: 12/12/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/855,269

Applicant(s)

WISE, DANIEL

Examiner

Naresh Vig

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 30 September 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1 - 7, 10 - 18 and 21 - 47 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 - 7, 10 - 18 and 21 - 47 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

This is in response to the correspondence received on 30 September 2002 to the office action mailed on 23 May 2002. Amendment to claims 1 and 10, cancellation of claims 8 – 9 and 19 – 20, and, addition of new claims 21 – 47 are acknowledged. There are 43 claims 1 – 7, 10 – 18 and 21 – 47 are pending for examination.

### ***Response to Arguments***

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

To determine the date for the web pages, applicant can refer to the copyright, or, refer to the URL to determine the date. URLs in web pages accessed through [www.archive.org](http://www.archive.org) are in YYYYMMDD format.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 – 7, 10 – 13, 15 – 47 rejected under 35 U.S.C. 103(a) as being unpatentable over Liquidation.com, inc., hereinafter known as Liquidation in view of Food Market Exchange hereinafter known as FME.

Regarding claims 1 – 3 and 10 – 11, Liquidation discloses that its “open technology platform integrates multiple vertical exchanges and brick-and-mortar enterprises into a single global surplus network of buyers and sellers, lowering transaction costs and achieving superior liquidity.” Liquidation’s online surplus exchange links qualified convenience of our web site. Liquidation’s method and system allows registered buyers and sellers to participate in the liquidation auctions; collects information from seller relating to the goods; classifies goods; protects seller’s sales channels by listing auctions anonymously and also by restricting auctions to specific buyers or areas; conducts background checks on all users to verify their business and their ability to conduct surplus transactions; provides search engine to buyers to find specific auctions. In addition, Liquidation provides buyers the ability to monitor open

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bids. In addition, Liquidation discloses that sellers have access to thousands of registered, authorized buyers, and, sellers can set restrictions for sale (see page 16, 31).

Liquidation does not disclose category selection for buyers. FME discloses system and method for online end-to-end vertical marketplace for the food industry (type of industry) where buyers and sellers of processed food and beverages, ingredients and raw materials (type of retailers) can meet and conduct business over the internet. Also, FME discloses classify food products into plurality of categories. Therefore, it is known at the time of invention to restrict the use of the system to selected users to prevent unauthorized use of the information, keep the information available to limited audience etc. (For example, for searching for real estate Metropolitan Regional Information Systems, Inc. (MRIS) restricts usage of its intranet system to licensed Real Estate Agents only, whereas, MRIS provides internet access [www.homesdatabase.com](http://www.homesdatabase.com) to general public for searching homes).

Regarding claims 4 and 12, Liquidation system and method allows sellers to list their auction on Liquidation marketplace. Sellers are required to enter their username and password (this service is only available to registered users), and, fill out the forms for the posting. Liquidation allows bidders to ask you questions about the auction. When an interested bidder poses a question regarding seller's auction listing, seller will

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automatically receive an e-mail message, along with a link to the answer form. Seller's answers to these questions are posted along with the auction.

Regarding claims 5 – 6 and 15 – 18, Liquidation discloses that it conducts background checks on all users to verify users' business and their ability to conduct surplus transactions. Liquidation does not disclose how it conducts background checks on its users. It is, however, well known that businesses perform background checks manually (commercial loans, rental agreement) and/or automatically (car loan application, store credit card issuance) on the entities they want to conduct business with, to ensure their stability and financial condition. For example, businesses may use publicly available information (SEC filings, quarterly earnings report, news papers, magazines, county records etc.), buy reports from providers of business information like Dunn & Bradstreet, or, use privately held information (history data acquired while working with the entity). Therefore it is inherent that Liquidation has system and method it uses to verify buyer information using publicly available data, and/or, using privately held data to verify their ability to conduct surplus transactions.

Regarding claims 7, Liquidation discloses that "Liquidation has solved the problem of alerting your normal sales channels when you are selling surplus goods at a

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discount. Auctions are listed anonymously and can be restricted to specific buyers or areas to ensure your protection.”

Regarding claim 13, Liquidation is an online surplus market solution provider. Therefore, it is inherent that approved buyers access Liquidation’s system by way of a public communication network.

Regarding claim 21 – 26, Liquidation discloses to provide full-service business-to-business for the exchange of surplus goods (page 9). Liquidation discloses its users selling plurality of types of merchandise like Electronics, General Retail Merchandise, Sporting Goods, Health & Beauty, Household Goods etc. (page 10). It would have been obvious at the time of invention to a person with ordinary skill in the art that a business can be a retailer, wholesaler, manufacturer, market-maker, supplier, value added reseller etc. In addition, FME also discloses traders, producers, agents and service providers to be users of its open market (page 7).

Regarding claims 27 and 37 – 40 and 44, Liquidation discloses to allow sellers to set restrictions for sales (page 30). In order to place a bid, Liquidation requires the users to be registered to place the bid. Users can register with Liquidation by completing a

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form. The form has instructions to help users through the process. Liquidation states that "Upon completing this form, you will be sent an email from us notifying you that we have received the information and generally, within 24 hours, we will confirm your information and your Liquidation.com account will be active". Liquidation allows buyers to conduct a search for the item they are looking for, or, browse auctions by category. After selecting the item, buyers can place bid and monitor the auction (pages 11 – 16). Liquidation discloses that when a seller's auctions are placed anonymously and can be restricted to specific buyers or areas to ensure seller's protection (page 30).

Liquidation does not disclose category selection for buyers. FME discloses system and method for online end-to-end vertical marketplace for the food industry (type of industry) where buyers and sellers of processed food and beverages, ingredients and raw materials (type of retailers) can meet and conduct business over the internet. Also, FME discloses classify food products into plurality of categories. Therefore, it is known at the time of invention to restrict the use of the system to selected users to prevent unauthorized use of the information, keep the information available to limited audience etc.

Liquidation does not disclose what results it to the buyer in response to their query. However, Liquidation disclose to protect seller's Sales Channels. Sellers can place auctions anonymously and keep the auction to restricted to specific buyers (page 30). Therefore, it would have been obvious at the time of invention to a person with ordinary skill in the art that Liquidation system and method protects sellers by disclosing limited results to buyers query to protect seller's Sales Channel.



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Liquidation does not disclose database. However, Liquidation allows buyers to conduct a search for the item they are looking for, or, browse auctions by category. After selecting the item, buyers can place bid and monitor the auction (pages 11 – 16). Therefore, it would have been obvious at the time of invention to a person with ordinary skill in the art that Liquidation has means and method to storing and updating data for documentation, tracking the bidding history, retrieval of data in case there was a system failure etc.

Regarding claim 28 – 30, 41 – 43 and 45 – 47, Liquidation discloses to provide full-service business-to-business for the exchange of surplus goods (page 9). Liquidation discloses its users selling plurality of types of merchandise like Electronics, General Retail Merchandise, Sporting Goods, Health & Beauty, Household Goods etc. (page 10). It would have been obvious at the time of invention to a person with ordinary skill in the art that a business can be a retailer, wholesaler, manufacturer, market-maker, supplier, value added reseller etc. In addition, FME also discloses traders, producers, agents and service providers to be users of its open market (page 7).

Regarding claim 31, Sellers can place auctions anonymously and keep the auction to restricted to specific buyers (page 30).

Regarding claim 32, Liquidation does not disclose how it qualifies buyers who match seller's search criteria. However, Liquidation disclose to protect seller's Sales Channels. Sellers can place auctions anonymously and keep the auction to restricted to specific buyers (page 30). Therefore, it would have been obvious at the time of invention to a person with ordinary skill in the art that Liquidation system and method to disclose auction information to buyers who meet seller's search criteria to protects seller's identity and Sales Channel.

Regarding claim 33, Liquidation states that "Auctions are listed anonymously and can be restricted to specific buyers or areas to ensure your protection" (page 30).

Regarding claim 34, Liquidation discloses to market sellers goods to thousands of their authorized buyers worldwide. Liquidation does not disclose how it qualifies buyers who match seller's search criteria. However, Liquidation disclose to protect seller's Sales Channels. Sellers can place auctions anonymously and keep the auction to restricted to specific buyers (page 30). Therefore, it would have been obvious at the time of invention to a person with ordinary skill in the art that Liquidation system and method to disclose auction information to buyers who meet seller's search criteria to protects seller's identity, Sales Channel, meet export/import restrictions etc.

Regarding claim 35, Liquidation states that "Auctions are listed anonymously and can be restricted to specific buyers or areas to ensure your protection" (page 30).

Regarding claim 36, Liquidation discloses to market sellers goods to thousands of their authorized buyers worldwide. Liquidation does not disclose how it qualifies buyers who match seller's search criteria. However, Liquidation disclose to protect seller's Sales Channels. Sellers can place auctions anonymously and keep the auction to restricted to specific buyers (page 30). Therefore, it would have been obvious at the time of invention to a person with ordinary skill in the art that Liquidation system and method to disclose auction information to buyers who meet seller's search criteria to protects seller's identity, Sales Channel, meet export/import restrictions etc.

Claim 14 is rejected under 35 USC § 103 as being unpatentable over Liquidation.com, inc., hereinafter known as Liquidation in view of Food Market Exchange hereinafter known as FME. In further view Metropolitan Regional Information Systems, Inc. hereinafter known as MRIS.

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Regarding claim 14, Liquidation discloses to provide full-service business-to-business for the exchange of surplus goods (page 9). Liquidation requires users to register with the system for securing the system. Liquidation does not disclose providing private communications network. However, MRIS has a system exclusively designed for Real Estate professionals like Real Estate Brokers, Salespersons, Appraisers etc. (see page 2). MRIS subscribers can access the system using their private network (user dials into MRIS system using Realtor Workstation provided by MRIS). MRIS verifies the license requirements for brokers, agents etc. prior to granting them access, In addition, MRIS allows access to assistants of the real estate professionals. MRIS prohibits sharing of the system access and requires each user of the system to register with them prior to using the system. Real Estate agents require Real Estate brokers authorization for registering with MRIS. (For information on joining MRIS, applicant is requested to visit [www.mris.com](http://www.mris.com) ). Therefore, it is known at the time of invention to a person with ordinary skill in the art to implement a private communication network to secure the system, to restrict access to the information to the selected users etc.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

1. Information on Homegain.com, Inc.
2. Information on Homes Database

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Naresh Vig whose telephone number is 703.305.3372. The examiner can normally be reached on M-F 7:30 - 5:00 (Alt Friday off).

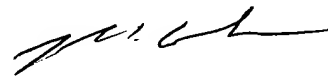
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 703.308.2702. The fax phone numbers for the organization where this application or proceeding is assigned are 703.305.7687 for regular communications and 703.305.7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.305.3900.

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December 9, 2002



**JOHN G. WEISS**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 3600**